

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

GENERAL ORDER 19 – 1

***STANDING PROCEDURAL ORDER RE:
APPOINTMENT OF COUNSEL AND MOTIONS FOR RELIEF UNDER THE FIRST STEP ACT***

Pursuant to the provisions of the Criminal Justice Act, Title 18, U.S.C. §3006A (a)(1) and (c), and the discretion of the Court, the Office of the Federal Public Defender for the District of Massachusetts is hereby appointed to screen the case of any defendant who was previously determined to have been entitled to appointment of counsel, or who is now indigent, to determine whether that defendant may qualify for relief under the First Step Act's retroactive application of the Fair Sentencing Act, which, among other things, increased the quantities of cocaine base necessary to trigger the enhanced penalty provisions set forth in 21 U.S.C. § 841(b)(1)(A) and (B).

The U.S. Probation Office for the District of Massachusetts is ordered to disclose, upon request, Presentence Reports to the Federal Public Defender's Office for the purpose of determining eligibility for relief.

If the FPD determines that a defendant has a colorable claim for relief, it shall take the following steps.

- 1) In the case of a defendant who previously was found to be indigent and was represented by the FPD, the FPD is authorized to file a motion if it determines that a colorable claim exists;
- 2) In the case of a defendant who previously was found to be indigent and was represented by CJA counsel who is a member of the current CJA panel, the FPD will contact the CJA lawyer and determine whether that lawyer wishes to provide further representation.
 - a. If the CJA lawyer expresses a willingness to represent the defendant, that lawyer shall file a request to be appointed for the purpose of preparing and filing a motion.
 - b. If the CJA lawyer is either unavailable or unwilling to undertake the representation, the FPD will file a request to be appointed as counsel.
- 3) If the FPD identifies a defendant with a colorable claim for relief who was not previously found to be indigent, the FPD shall obtain a financial affidavit (CJA Form 23) from the defendant, and submit the completed form, along with a request to be appointed as counsel, to the Court.

Upon receipt of a request to be appointed in cases described in paragraphs 1 through 2, the Clerk shall promptly appoint the FPD or the CJA counsel making the request. If the FPD has a conflict of interest that makes it unable to accept the appointment, it shall so state in the request and the clerk shall appoint a lawyer from the Criminal Justice Act Panel, following the usual appointment procedures.

A request made by the FPD on behalf of a defendant who was not previously found to be indigent shall be submitted to a judicial officer for review of the financial affidavit. If the defendant is found to be indigent, the FPD shall be appointed, unless a conflict of interest bars that appointment. If the FPD has a conflict of interest, a lawyer from the CJA panel shall be appointed, following usual procedures.

Dated: April 25, 2019

/s/ – Denise J. Casper
UNITED STATES DISTRICT JUDGE